

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

First Appeal No. 596 of 2006
in
L.A.R. No. 332 of 2000
(Old No. 273 / 1987)

THE STATE OF MAHARASHTRA
(Thorough the Special Land Acquisition
Officer, Metro Centre No.3, Panvel,
Dist. Raigad. ... Appellant
V/S

1. PANDHARINATH PARSHURAM KENI, adult,
2. Baliram Parshuram Keni, Adult,
3. Dattatraya Parshuram Keni, Adult,
4. Prakash Parshuram Keni, Adult,
5. Subhash Parshuram Keni, Adult,
6. Smt. Ramubai Parshuram Keni, Adult,
7. Sau. Indubai Raghunath Ghate, Adult,
8. Sau. Muktabai Trimbak Bhoir, Adult,
All r/o. Chinchpada, Vadghar,
Tal. Panvel, District : Raigad. Respondents

Shri M. S. Mhambre AGP for appellants
Shri R.S.Thakur, advocate for respondents

CORAM: SHRI R.M.S. KHANDEPARKAR
&
SMT. ROSHAN DALVI JJ.
DATE:25/04/2006

ORAL JUDGMENT (Per R.M.S. KHANDEPARKAR J.)

1. Admit. By consent heard forthwith. The appellant challenges
the award passed by the Reference Court on various grounds

including the ground that in terms of section 25 of the Land Acquisition Act, 1894, as it stood prior to 24th September 1984, in the case of failure on the part of the claimant to answer the notice issued under Section 9, the Reference Court was not empowered to award compensation over and above the amount awarded by the Land Acquisition Officer, and this aspect of the matter has been totally ignored by the Reference Court in the case in hand.

2. The undisputed facts relevant for the decision are that the land of the respondent – claimant was sought to be acquired for the purpose of New Bombay Project pursuant to issuance of Notification under Section 4 of the said Act on 3rd February 1970. After issuance of the Notice under Section 9 of the said Act, an award came to be declared under Section 11 of the said Act on 22nd September 1986 awarding the compensation at the rate of Rs.1.20 per sq. meter. The Reference Court by its judgment dated 29th July 2002 enhanced the compensation to the tune of Rs.15/- per sq. meter .
3. Though the impugned award is challenged on various grounds, it is not necessary to consider all those grounds, and suffice to consider only one ground pertaining to the failure on the part of the Reference Court to take into consideration the applicability of unamended section 25 of the said Act to the facts of the case in hand.
4. It was the case of the appellant before the Reference Court

that the Notice under Section 9 of the said Act was duly served upon the Claimant, but it was not replied to by the respondent – Claimant. Undisputedly the claim by the appellant in that regard before the Reference Court was not disputed by the Claimants/ respondents.

5. It is settled law that prior to amendment of section 25 i.e. prior to 24th September 1984, it was necessary for the claimant to put forth their claim for compensation in answer to section 9 notice and in case of failure to claim such compensation, the claimant would lose his right to get compensation over and above the amount awarded by the Land Acquisition Officer under the award declared under Section 11 of the said Act, unless he is specifically permitted by the Court for sufficient reasons to claim such enhancement.

6. In fact the unamended section 25, as it stood prior to 24th September 1984, read thus:

“25. Rules as to amount of compensation -

(1) When the applicant has made a claim to compensation, pursuant to any notice given under Section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under Section 11.

(2) When the applicant has refused to make

such claim or has omitted without sufficient reason (to be allowed by the judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector”.

7. It is not in dispute that Section 9 notice was not replied to by the Claimant. It goes without saying that the claimant had left it to the Land Acquisition Officer to assess the market value of the land. It is also not in dispute that the claimant did not seek any permission from the court nor the court granted any permission to the claimant, to claim any amount as compensation, more than the amount awarded by the Land Acquisition Officer under the award declared under Section 11 of the said Act. Being so, the Reference Court could not have enhanced the compensation awarded by the Land Acquisition Officer.
8. The learned Advocate for the respondent did submit that no evidence was lead by the appellant in respect of their

claim before the Reference Court and apart from denial, no positive evidence was lead by the appellant. Indeed the observation by the Reference Court discloses that the appellant did not examine any witness in support of their case and they merely relied upon the cross examination of the claimant's witnesses. On this aspect also the law is well settled that in case of claim for enhancement, the burden entirely lies on the claimant and any failure on the part of the State to prove to the contrary cannot justify the enhancement of compensation. That apart, as per section 25 there is an implied presumption in favour of the State as regards the market value of the land acquired. The burden therefore lies entirely on the claimant to justify his failure to answer the notice under section 9 and to specify the quantum of compensation and also to justify the enhancement claimed in the reference application. In case of failure in that regard on the part of the claimant, no amount of compensation can be enhanced over and above the amount awarded by the Land Acquisition Officer. Merely because the State has relied upon the cross examination of the claimant's witness that will not be enough to draw an adverse inference against the appellant. Hence it is to be held that the claimant did not discharge his burden to establish that the claimant had made a specific claim in answer to section 9 notice and therefore the claimant was entitled for enhancement of compensation from Rs.1.20 per sq. meter to Rs.15 per sq.

meter.

9. For the reasons stated above, the impugned award cannot be sustained and is liable to be set aside. Hence the appeal succeeds. The impugned award is hereby set aside and the award passed by the Land Acquisition Officer is restored. No order as to costs.

(SMT. ROSHAN DALVI J.) (SHRI R.M.S.KHANDEPARKAR J)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Civil application No. 1756 of 2005

in

First Appeal No. 596 of 2006

in

L.A.R. No. 332 of 2000

(Old No. 273 / 1987)

THE STATE OF MAHARASHTRA Applicant

V/S

PANDHARINATH PARSHURAM KENI

& ors.

... Respondents.

Shri M. S. Mhambre AGP for appellants

Shri R.S.Thakur , advocate for respondents

CORAM: SHRI R.M.S. KHANDEPARKAR

&

SMT. ROSHAN DALVI JJ.

DATE:25/04/2006

P.C. :

In view of the disposal of the First Appeal No. 596 of 2006 this
Civil application does not survive and is disposed of accordingly.

(SMT. ROSHAN DALVI J.) (SHRI R.M.S.KHANDEPARKAR J)